

Montana Water Court
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FILED
08/28/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40D-0238-R-2022
Nordlund, Julia
9.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
BIG DRY CREEK - BASIN (40D)
PRELIMINARY DECREE

CLAIMANTS: Margaret R. Hafla; Annette D. Saylor;
Scott Saylor

CASE 40D-0238-R-2022
40D 19475-00
40D 19476-00
40D 19477-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 40D 19475-00, 40D 19476-00 and 40D 19477-00 are rights owned by Margaret Hafla, Annette Saylor and Scott Saylor. The claims were decreed with DNRC issue remarks. No objections, counterobjections, or NOIAs were filed. In an Order Consolidating Case and Order Setting Filing Deadline the Court ordered Claimants file evidence or contact the Water Court to resolve the issue remarks appearing on the abstracts by January 20, 2023. Claimants filed Notice of Filing Evidence and Motion to Resolve DNRC Issue Remarks and Foundational Affidavit of Attorney Jeremy A. Michael in Support of Notice of Filing Evidence and Motion to Resolve DNRC Issue Remarks on May 22, 2023.

FINDINGS OF FACT

1. Claim 40D 19475-00 received the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE.
THE CLAIMED VOLUME EQUALS 12.2 TIMES THE CAPACITY OF THE RESERVOIR.

The claimed volume is 168.72 AC/FT. The claimed acres are 29.60 and the listed reservoir capacity is 14.30 AC/FT. In the Notice of Filing Evidence the Claimants rely on the DNRC Claims Examination Manual to address the capacity of the reservoir. The manual states if the claimed or calculated volume is greater than 2 times the capacity of the reservoir, the claim may primarily be a direct flow irrigation system. In that case, the quantified volume is not listed on the abstract and an information remark is added in its place. The information remark states "Primarily a direct flow system; volume not decreed."

In this case, Claimants state the claimed and calculated volume is greater than two times the capacity of the reservoir and request the water right be classed as a direct flow irrigation system and the volume information remark added in place of the claimed quantified volume.

2. Claim 40D 19476-00 received the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE
CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

This water right is claimed for irrigation by water spreading of runoff with the diversion means listed as dike. The claim map and available Google Earth aerial photographs support the claimed point of diversion location for the dikes as being in the NWNW of Section 22.

The map and photographs further show the dikes extending into the SWNW of Section 22, T16N, R42E, Garfield County. The current legal land description does not cover the entire location of the dikes. The legal land description for the point of diversion No. 1 should be corrected to the W2NW of Section 22, T16N, R42E, Garfield.

3. Claim 40D 19477-00 received the following issue remark:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

This water right is for flood irrigation using runoff with the diversion means listed as “Dam” and with an onstream reservoir. The Michael Affidavit, claim map and Google Earth aerial photographs show the location of the dam and the onstream reservoir in the SESENW of Section 22, T16N, R42E, Garfield County. The legal land description should be corrected to describe the location more accurately.

4. Claim 40D 19475-00 was decreed with the following notice type issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

These remarks were placed on the water right to give notice to the claimants of changes made to the water right by DRNC during examination. No objections were filed to these remarks. These remarks will be removed as they have served their notice purpose.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhardtmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. The evidence entered into the record is sufficient to resolve the issue remarks on this claim and support making the corrections outlined above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

Post Decree Abstracts of Water Right Claims are served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 19475-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARGARET R HAFLA
C/O ANNETTE SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

SCOTT SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

ANNETTE D SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

Priority Date: JUNE 30, 1961

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
ONSTREAM RESERVOIR.

Volume: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Climatic Area: 1 - HIGH

Maximum Acres: 29.60

Source Name: UNNAMED TRIBUTARY OF HAWKS NEST CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESW	16	16N	42E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESW	16	16N	42E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Dam Height: 9.00 FEET

Depth: 6.00 FEET

Surface Area: 5.96 ACRES

Capacity: 14.30 ACRE-FEET

THE RESERVOIR RECORD WAS BEEN ESTIMATED BY DNRC.

Period of Use:

JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	6.60		NESW	16	16N	42E	GARFIELD
2	23.00		S2SW	16	16N	42E	GARFIELD
Total:	29.60						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 19476-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

MARGARET R HAFLA
C/O ANNETTE SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

SCOTT SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

ANNETTE D SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

Priority Date: JANUARY 5, 1932

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 50.60 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 22.00

Source Name: UNNAMED TRIBUTARY OF HAWKS NEST CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2NW	22	16N	42E	GARFIELD

Period of Diversion: FEBRUARY 1 TO JUNE 1

Diversion Means: DIKE

Period of Use: FEBRUARY 1 TO JUNE 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	22.00		NW	22	16N	42E	GARFIELD

Total: 22.00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 19477-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

MARGARET R HAFLA
C/O ANNETTE SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

SCOTT SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

ANNETTE D SAYLOR
2909 E MACDONALD
BILLINGS, MT 59102

Priority Date: JANUARY 5, 1932

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 40.50 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 13.50

Source Name: HAWKS NEST CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENW	22	16N	42E	GARFIELD

Period of Diversion: FEBRUARY 1 TO SEPTEMBER 30

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESENW	22	16N	42E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Period of Use: FEBRUARY 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	13.50		E2NW	22	16N	42E	GARFIELD

Total: 13.50